

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
HEATHER E. LUPO as Administrator of the
ESTATE OF LOUIS M. LUPO and Individually,

ORDER

Plaintiff(s),

Index No.: 7:20-CV-05784-CS

- against -

DAVID M. BUCCI and MCLANE
FOODSERVICE DISTRIBUTION, INC.,

Defendant(s)

-----X
Plaintiff, HEATHER E. LUPO as Administrator of the ESTATE OF LOUIS M.

LUPO and Individually, having made an application to the Court for an Order allowing her to settle and discontinue all claims in the above-captioned action, pursuant to the Estates Powers and Trusts Law section 5-4.6, and the Court, upon consideration of the plaintiff's Order to Show Cause, affidavit of Joseph E. O'Connor, Esq., sworn to on October 14, 2020, together with all exhibits annexed thereto, the affidavit of HEATHER E. LUPO, sworn to on October 25, 2020, and the plaintiff and the defendants having settled this matter on the 11th day of September 2020 following pre-litigation mediation, and the Court having heard no objection to the proposed settlement of the above action as agreed to by the parties and their counsel in the total amount of \$2,000,000.00, and after due deliberation and consideration, it is hereby:

ORDERED, that the settlement of this case is hereby approved in accordance with the terms set forth in plaintiff's application, which are incorporated herein by reference and made a part hereof, consisting of the following payments:

A) That the plaintiff **HEATHER E. LUPO as Administrator of the ESTATE OF LOUIS M. LUPO and Individually**, is granted the authority to settle and discontinue all claims against the defendants herein for the total sum of TWO MILLION AND 00/100 DOLLARS (\$2,000,000.00);

B) That the attorneys' fees to be paid to O'Connor & Partners, PLLC are fixed and approved in the sum of \$600,000.00;

C) That the total disbursements of O'Connor & Partners, PLLC in the sum of \$19,666.38, are hereby waived by O'Connor & Partners, PLLC;

D) That the sum of \$600,000.00, representing the reduced attorneys' fees, as set forth above, shall remain in an interest-bearing escrow account by O'Connor & Partners, PLLC until O'Connor & Partners, PLLC has submitted proof to this Court that a petition has been filed in Surrogate's Court, Orange County, for allocation and distribution of the remainder of the settlement proceeds. Upon proof to this Court that a petition has been filed in the Surrogate's Court, Orange County, for the allocation and distribution of the remainder of the settlement proceeds, O'Connor & Partners, PLLC shall be authorized to receive the sum of \$600,000.00 as payment of its attorneys' fee;

E) Payment in the amount of \$2,000,000.00 shall be made by defendants **DAVID M. BUCCI and MCLANE FOODSERVICE DISTRIBUTION, INC.** within twenty-one (21) days of their receipt of a general release, stipulation of discontinuance and Order approving the settlement, and shall be made by check payable to the order of O'Connor & Partners, PLLC, as attorneys for **HEATHER E. LUPO as Administrator of the ESTATE OF LOUIS M. LUPO and Individually**, and sent to Joseph E. O'Connor, Esq.

of O'Connor & Partners, PLLC, 255 Wall Street, Kingston, New York 12401 to be deposited into an interest-bearing account, pursuant to E.P.T.L. section 5-4.6;

F) That, pursuant to the Estates Powers & Trusts Law section 5-4.6, this action shall be transferred to the Surrogate's Court of Orange County, for allocation and distribution of all remaining net cash proceeds in the amount of \$1,400,000.00, and related matters;

G) That the plaintiff HEATHER E. LUPO is hereby granted permission by the Court to sign all releases and other documents necessary to implement the terms of this settlement; and

H) That this Order shall constitute conclusive evidence of the adequacy of the compromise and settlement of this action in the amount of \$2,000,000.00, pursuant to the Estates Powers & Trusts Law section 5-4.6(b).

Dated: November 24, 2020

SO ORDERED.


CATHY SEIBEL, U.S.D.J.